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# Draft report

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# Annex I

# Informal summary of the discussions in the Working Group of the Whole, prepared by the Chairperson

## A. Scope of the new system

1. Different views were expressed regarding the scope of the new system of administration of justice at the United Nations. Some delegations supported the expansion of the scope of the new system to the United Nations personnel who were not covered under the current system. It was also proposed that access to the new system be granted to certain categories of non-staff personnel, including officials other than Secretariat officials and experts on mission. The view was also expressed that the new system should cover all personnel working on a full-time basis for the Organization.

2. Some delegations reiterated their preference for a step-by-step approach and favoured limiting the scope of the new system, at the initial stage, to the staff covered under the current system. In their view, this approach could facilitate the resolution of pending issues and the timely implementation of the new system. The coverage of the other categories of personnel listed in the note by the Secretary-General, as well as the best remedies that could be made available to them, should be considered at a later stage.

3. Other delegations expressed concern about granting access to certain categories of non-staff personnel to the United Nations Dispute Tribunal and the United Nations Appeals Tribunal, as proposed in the draft statutes, annexed to the note by the Secretary-General. In accordance with this viewpoint, addressing the grievances of non-staff personnel might be indispensable, but it should not be

pursued in the format of the system established for the staff. The argument was also advanced that the rights and obligations of non-staff personnel and those of staff members were different in nature. The expansion of the scope of the new system would be costly and cumbersome, and would entail the risk of undermining from the outset the ability of the new system to protect the personnel covered by the current system. Such an expansion was likely to generate unsound results, such as: probationary employees of the United Nations enjoying less protection than contractors; confusion on whether contractors and consultants were bound by the rules applicable to staff members; and the potential risk that contractors and consultants would claim to be considered as staff members for purposes other than access to the new system of administration of justice.

4. The necessity of assessing the effectiveness of mechanisms available to the various types of personnel for settling their disputes with the Organization was mentioned by some delegations. A preference was expressed for the recourse by non-staff personnel to arbitration and other mechanisms provided for under their relevant contracts.

5. Further information was requested about the redress mechanisms currently available to interns, gratis personnel and volunteers other than United Nations Volunteers, as well as about the kind of measures under way, to ensure that field workers could have access to the justice system. Clarifications were sought about the existence of cases in which the existing Administrative Tribunal might have granted *locus standi* to non-staff personnel, and on the resort to "traditional methods involving community participation" as a means of dispute settlement for daily paid workers.

## B. Legal assistance for staff

6. Some delegations reiterated the importance of providing continued legal assistance for staff through a professionalized office, which should be independent, impartial and equally accessible to all staff. They also repeated the view that legal assistance should include the legal assessment of the merits of a case as well as legal representation.

7. The view was expressed that the employment of external lawyers, who were not familiar with the Staff Regulations and Rules and the jurisprudence of the United Nations Administrative Tribunal, was unlikely to be helpful and was not cost-effective. It was suggested that the individuals who would receive legal assistance from the Office of Staff Legal Assistance should contribute to the expenses incurred. This procedure would discourage the institution of abusive proceedings.

8. In the view of some delegations, more information was required on the barriers that prevented external lawyers from becoming familiar with the United Nations system of administration of justice, as well as on the problems that recourse to such lawyers would generate. Additional information was also requested on the representation of staff by members of the Office of Staff Legal Assistance.

9. It was pointed out that, since the General Assembly had decided to revert to the mandate of the Office of Staff Legal Assistance at its sixty-third session, the Ad Hoc Committee should avoid intensive discussion of the issue. Concerns were

expressed about the representation of staff by the members of the Office of Staff Legal Assistance in cases before the system, owing to possibility of conflict of interests. It was also observed that such a practice did not exist in administrative tribunals of other international organizations.

## C. Jurisdiction and powers of the United Nations Dispute Tribunal and the United Nations Appeals Tribunal

10. The view was expressed that the jurisdiction *ratione materiae* of the formal system should be sufficiently broad to include claims relating to conditions of employment, as well as disputes arising out of alleged violations by the Organization of its obligations vis-à-vis its employees.

11. According to another view, the jurisdiction *ratione materiae* of both Tribunals should be narrowly defined. The language contained in the draft statutes, which reflected the proposal by the Redesign Panel concerning the breach of duties of the Organization, was too broad. Concern was expressed about the practice of the United Nations Administrative Tribunal, which had gone beyond the terms of contracts and the relevant rules and created a new subject-matter jurisdiction that was not originally foreseen.

12. It was pointed out that it would be inappropriate to empower the United Nations Appeals Tribunal to review errors of material facts.

13. Concern was expressed about granting staff associations *locus standi* to bring claims on behalf of their members. It was stated that class actions were not appropriate in a self-contained system of administration of justice such as that of the United Nations. Concerns were also expressed about the provisions of the draft statutes that would allow staff associations to bring actions on their own behalf, since there were alternative mechanisms for staff associations to protect their rights.

14. Some delegations emphasized the need for receiving more information on the rules currently applicable to staff associations as well as the solutions envisaged under the new system, in particular with respect to their power to represent staff members and their *locus standi* to protect their own rights.

15. At the fourth meeting of the Working Group of the Whole, on 21 April, the Chairman informed the Working Group that in view of the large number of pending issues he had requested Thomas Fitschen, the Vice-Chairman, to conduct intersessional informal consultations on the draft statutes of the United Nations Dispute Tribunal and the United Nations Appeals Tribunal with a view to making further progress.